

REMARKS

The claims remaining in the present application are Claims 1, 2, 4-16, 18-25, and 27-30. Claims 1, 15 and 22 are amended. No new matter has been added.

Support for the amendments to Claims 1, 15 and 22 can be found at least at page 12, lines 11-34.

CLAIM REJECTIONS

35 U.S.C. §112, first paragraph

According to the instant Office Action, Claims 1, 2, 4-16, 18-25 and 27-30 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Applicant respectfully submits that Claims 1, 2, 4-16, 18-25 and 27-30 are in compliance with the enablement requirement of 35 U.S.C. § 112, first paragraph.

Claims 1, 2, 4-16, 18-25 and 27-30 are rejected as it is asserted that the original specification does not provide support for “wherein said free computing resources comprises resources that are not preconfigured for use in said computing system” as recited in independent Claims 1, 15 and 22 . Applicant respectfully submits that the instant specification does provide support for the embodiments of independent Claims 1, 15 and 22, as amended.

First, Applicant respectfully notes that page 12, lines 15-28, of the present application recites (emphasis added):

A pool of free computing resources 304, as described herein, is a collection of computing resources that are representative of the computing resources in the operating computing resource pool 301 and are available for configuration for use in the operating computing pool 301, but which are not configured for any specific application in the operating computing resource pool 301 until a specific need arises.

In step 202, a free computing resource is selected from the pool of free computing resources 301 to replace an operating computing resource 301 for example in computing system 400 or Utility Data Center 500. In one embodiment, the selection of the free computing resource is controlled by resource manager 302 based on a current need for resource in the operating computing resource pool 301, or based on instructions set forth in resource usage plan 306.

Accordingly, Applicant respectfully submits that the instant specification includes support for “wherein said free computing resources comprises resources that are not preconfigured for use in said computing system according to a configuration of said operating computing resource” (emphasis added) as claimed. Therefore, Applicant respectfully submits that Claims 1, 2, 4-16, 18-25 and 27-30 overcomes the rejection under 35 U.S.C. §112, first paragraph, as Claims 1, 2, 4-16, 18-25 and 27-30 comply with the enablement requirement.

35 U.S.C. §103

The instant Office Action states that Claims 1, 2, 4-16, 18-25 and 27-30 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2004/0078622 by Kaminsky et al. (referred to hereinafter as “Kaminsky”) in view of U.S. Patent Publication No. 2004/0039815 by Evans et al. (referred to hereinafter as “Evans”). Applicant has reviewed Kaminsky and Evans

and respectfully submits that embodiments of the present invention are patentable over Kaminsky and Evans for at least the following rationale.

First, Applicant respectfully submits that Kaminsky teaches away from “configuring said selected free computing resource to operate in said computing system, after replacing said operating computing resource with said free computing resource in said computing system, wherein said free computing resources comprises resources that are not preconfigured for use in said computing system according to a configuration of said operating computing resource,” (emphasis added) as recited in independent Claims 1, 15 and 22. Applicant notes that the instant Office Action states “Kaminsky does not disclose that said free computing resources comprise resources not preconfigured for use in said operating system” (Office Action mailed March 11, 2008; page 5, lines 21-22).

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)).

Applicant respectfully notes that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)).

Independent Claim 1 recites (emphasis added):

A computing resource management method comprising:
establishing a pool of free computing resources in a computing system;
selecting a free computing resource from said pool of free computing resources to replace an operating computing resource in said computing system; and
configuring said selected free computing resource to operate in said computing system, after replacing said operating computing resource with said free computing resource in said computing system, wherein said free computing resources comprises resources that are not preconfigured for use in said computing system according to a configuration of said operating computing resource.

Independent Claims 15 and 22 recite similar embodiments. Claims 2 and 4-14 that depend from independent Claim 1, Claims 16 and 18-21 that depend from independent Claim 15 and Claims 23-25 and 27-30 that depend from independent Claim 22 also include these embodiments.

Referring to the abstract, Kaminsky recites “[a] method, system and apparatus for server failure diagnosis and self-healing in a server arm. An automatic server farm which has been configured in accordance with the inventive arrangements can include a multiplicity of servers enabled to respond to requests

received from clients which are external to the server farm” (emphasis added).

Kaminsky also states in paragraphs 0028 through 0029 state,

In the course of the communicative coupling of client 110 and the selected one of the servers 150, request/response transactions can occur. Ordinarily, where the selected one of the servers 150 can respond to requests from the client 110 in a suitable fashion, session affinity can be maintained. However, where the selected one of the servers 150 fails to respond to a request 190A...the client 110 can identify the selected one of the servers 150 as having failed to respond to the request 190A...

In any case, upon detecting the retry request 190B, the network dispatcher 140 can assign a new one of the servers 150 to respond to the retry request 190B. More importantly, the new one of the servers 150 can undertake remedial measures in the selected one of the servers 150...Such remedial measures can include, for instance, the recycling of the selected one of the servers 150, the restarting of a particular application or process in the selected one of the servers 150, and the notification of the administrative node 160 (emphasis added).

Kaminsky further states at lines 3-6 of paragraph 0026, “The server farm 120 can include one or more servers 150, each server 150 hosting one or more computing processes 170 and associated data 180.” Applicant understands Kaminsky to teach a server farm that includes a multiplicity of servers that have already been configured to respond to requests received from a client. Each of the servers is hosting computing processes. In paragraphs 0028-0029 Kaminsky teaches that if a particular server that is assigned to respond to the request of a particular client fails, another server, from the server farm, can be assigned to respond to that request. The new server can perform remedial measures, such as restarting an application or process, and notifying an administrative node. In other words, Applicant understands the servers of Kaminsky to be interchangeable, and thus are preconfigured to respond to the same requests.

By teaching that the servers have already been configured and each are hosting computing processes, Applicant submits that Kaminsky teaches away from “configuring said selected free computing resource to operate in said computing system, after replacing said operating computing resource with said free computing resource in said computing system, wherein said free computing resources comprises resources that are not preconfigured for use in said computing system according to a configuration of said operating computing resource” (emphasis added).

Second, Applicant respectfully submits that “[i]t is improper to combine references where the references teach away from their combination” (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Applicant respectfully submits that there is no motivation to combine the teachings of Kaminsky and Evans, because Kaminsky teaches away from the suggested modification.

As presented above, by teaching that the servers have already been configured and each are hosting computing processes, Applicant submits that Kaminsky teaches away from “configuring said selected free computing resource to operate in said computing system, after replacing said operating computing resource with said free computing resource in said computing system, wherein said free computing resources comprises resources that are not preconfigured for use in said computing system according to a configuration of said operating computing

resource” (emphasis added). Therefore, Applicant respectfully submits that Kaminsky teaches away from the suggested modification.

Third, Applicant respectfully submits that the proposed modification would change the principle of operation of Kaminsky and would render Kaminsky unsatisfactory for its intended purpose.

Applicant respectfully notes that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Moreover, Applicant notes that “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious” (emphasis added) (MPEP 2143.01; *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Moreover, “[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed amendment” (emphasis added) (MPEP 2143.01; *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

Applicant respectfully submits that the principle of operation of Kaminsky is to provide multiple servers that are each able to respond to requests (see at least Abstract and [0017]). In particular, Applicant submits that the suggested

modification would change the principle of operation of Kaminsky, in that servers would require reconfiguration prior to responding to a request. Furthermore, such a modification would render Kaminsky unsatisfactory for its intended purpose of providing multiple servers that are each able to respond to requests.

Applicant respectfully asserts that the combination of Kaminsky and Evans does not satisfy a *prima facie* case of obviousness under 35 U.S.C. §103(a). Therefore, Applicant respectfully asserts that the combination of Kaminsky and Evans does not teach, disclose or suggest the claimed embodiments of the present invention as recited in independent Claims 1, 15 and 22, that these claims overcome the rejection under 35 U.S.C. §103(a), and that these claims are thus in a condition for allowance. Applicant respectfully submits that the combination of Kaminsky and Evans also does not teach or suggest the additional claimed features of the present invention as recited in Claims 2 and 4-14 that depend from independent Claim 1, Claims 16 and 18-21 that depend from independent Claim 15 and Claims 23-25 and 27-30 that depend from independent Claim 22. Therefore, Applicant respectfully submits that Claims 2, 4-14, 16, 18-21, 23-25 and 27-30 also overcome the rejection under 35 U.S.C. §103(a), and are in a condition for allowance as being dependent on an allowable base claim.

CONCLUSION

In light of the above-listed remarks, reconsideration of the rejected claims is requested. Based on the amendments and arguments presented above, it is respectfully submitted that Claims 1, 2, 4-16, 18-25 and 27-30 overcome the rejections of record. Therefore, allowance of Claims 1, 2, 4-16, 18-25 and 27-30 is respectfully solicited.

Should the Examiner have a question regarding the instant amendment and response, the Applicant invites the Examiner to contact the Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,
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